IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Criminal Original Petition Nos.29385, 30000, 30001,
30002, 30003 and 29180 of 2007 and
Miscellaneous Petitions Nos.1, 1, 1, 1, 1 and 1 of 2007

1. M/s. Kongarar Spinners Ltd.,
   Rep. by its Managing Director
   Mr. R.Balasubramaniyam, Pethappampatti Post,
   Udumalpet - 642 205
2. Mr. R.Balasubramaniyam
   Managing Director, M/s. Kongarar Spinners Ltd.,
   Pethappampatti Post,
   Udumalpet - 642 205 .. Petitioners in all Crl.O.Ps./
   Accused

-Vs.-

Mr. S.Sankaralingam
Enforcement Officer,
Employees Provident Funds,
No.80 Venkatramanan Street
Pollachi - 642 001 .. Respondent in all Crl.O.Ps./
Complainant

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure to call for the records relating to C.C.No.234 of 2006 (Crl.OP.29385/2007) C.C.Nos.237 of 2006 (Crl.OP.30000/2007), C.C.No.240 of 2006 (Crl.OP.30001 of 2007), C.C.No.238/2006 (Crl.OP.30002 of 2007, C.C.No.239 of 2006 (Crl.OP.30003 of 2007) and C.C.No.233 of 2006 (Crl.OP.29180 of 2007) on the file of the Judicial Magistrate No.II, Udumalpet and quash the same.

For Petitioners : Mrs. P.Indumathi.
For Respondent : Mr. V.Vibhishan, for E.P.F.,

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C O M M O N O R D E R

The petitioners are the accused facing trial in C.C.Nos.234, 237, 240, 238, 239 and 233 of 2006, respectively, pending on the file of the Judicial Magistrate No.II, Udumalpet and they have filed

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the above petitions seeking to quash the above said criminal proceedings.

2. The brief facts that are necessary for the disposal of the above criminal original petitions are set-out below:-

Under Sections 6 and 6-A read with paragraphs 30 and 38 of the Employees' Provident Funds Miscellaneous Provisions Act, 1952 and Employees' Provident Funds Scheme the accused are required to pay the employer's contributions to the Employees' Pension Fund in respect of the employees of the said establishment within fifteen days of the close of every month.

3. It is the case of the respondent in each of the petitions that inspite of several requests the accused failed to pay the Employees Pension Fund Contributions for the following periods before the due date:-

Month & Year	Employer's Share towards Employees' Pension Fund	Due date for payment
12/2000	188046	15/01/2001
01/2001	193364	15/02/2001
02/2001	167274	15/03/2001
Total	548684	

Month & Year	Employer's Share towards Employees' Pension Fund	Due date for payment
09/2001	177500	15/10/2001
10/2001	178439	15/11/2001
11/2001	169788	15/12/2001
Total	525727	

Month & Year	Employer's Share towards Employees' Pension Fund	Due date for payment
06/2002	172534	15/07/2002
07/2002	179098	15/08/2002
08/2002	180468	15/09/2002
Total	532100	

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Month & Year	Employer's Share towards Employees' Pension Fund	Due date for payment
12/2001	185628	15/01/2002
01/2002	186252	15/02/2002
02/2002	173549	15/03/2002
Total	545429	

Month & Year	Employer's Share towards Employees' Pension Fund	Due date for payment
03/2002	182250	15/04/2002
04/2002	178414	15/05/2002
05/2002	177036	15/06/2002
Total	537700	

Month & Year	Employer's Share towards Employees' Pension Fund	Due date for payment
09/2000	162978	15/10/2000
10/2000	179697	15/11/2000
11/2000	171887	15/12/2000
Total	514562	

respectively. Under the above said circumstances since the accused / petitioners herein have committed offences under Sections 14 (1A) and 14 A of the Employees' Provident Funds and Miscellaneous Provisions Act 1952, the respondent has filed a complaint before the Court of Judicial Magistrate No.II, Udumalpet, on 13.09.2005 and the same has been taken cognizance and process have been issued to the petitioners. Challenging the validity of the said prosecution launched against the petitioners the petitioners have come before this Court by invoking the provisions contained in Section 482 of the Criminal Procedure Code to quash the said proceedings on the only ground that the complaint filed by the respondent is barred by limitation as per the provisions contained in Section 468 of the Criminal Procedure Code.

4. Heard the learned counsel on either side.

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5. Learned counsel for the petitioners in each of the petitions by referring to Section 468 (1) (c) of the Criminal Procedure Code submitted that since the maximum punishment that could be imposed for the offence committed under Sections 14 (1 A) and 14 A of the Employees' Provident Fund Act is only three years, the complaint ought to have been filed within a period of three years, but admittedly the complaint has been filed beyond the period of three years and hence the criminal original petitions are liable to be quashed. In support of the above said contention the learned counsel for the petitioners relied upon a decision of a learned single Judge of this Court reported in 1997 (I) CTC 388 (S.G.Gopiah v. State) and submitted that it was a case where the offence committed was under Sections 21 and 36(E) of the Tamil Nadu Forest Act 1882 read with Rules 3 and 7 of the Tamil nadu Sandalwood Possession Rules, 1970 and since the complaint filed was beyond the period of limitation prescribed the criminal case was quashed. In the said decision in paragraph 3 it is observed as follows:-

> "3. The Government Advocate concedes that in this case the cognizance has been taken only after the period of limitation. Under section 468 Cr.P.C., for the offences punishable up to three years, the charge-sheet or complaint has got to be filed within three years. Beyond the said period of limitation the Court will not be empowered to take cognizance of the case since there is a bar provided under the said section. Therefore, in view of legal infirmity in the matter of taking cognizance, I feel that the order passed by the lower court is not sustainable in law, and therefore it is liable to be set aside."

Relying upon the above said decision the learned counsel for the petitioner in each of the petitions submitted that all the criminal cases pending against the petitioners are liable to be quashed. Except the above said submissions no other submissions have been made by the learned counsel for the petitioner.

6. Countering the said submissions the learned counsel for the respondent in each of the petitions submitted that the offence under Sections 14 (1A) and 14 A are continuing offences and as such the period of limitation prescribed under Section 468 (1) (c) of the Criminal Procedure Code is not applicable to these cases. Learned counsel further submitted that the decision reported in 1997 (I) CTC 388 (referred to supra) is not applicable to the facts of this case. To substantiate the same the learned counsel for the respondent relied upon the following decisions:-

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(i) 1980 L.W. (Crl) 226 (DB) (Premier Studs & Chaplets Co., In re: (D.B. - Order of Reference, Maheswaran, J.), wherein in paragraph 20 of the said decision it is laid down as follows:-

> "20. The statute creates a duty on the part of the employers to pay a contribution as laid down by Ss. 6 and 6 A of the Act and paragraph 76 (a) of the Scheme penalises the failure to pay such contribution and paragraph 76 (b) penalises the deduction or attempting to deduct from the wages or other remuneration of a member the whole or any part of the employer's contribution and paragraph 76 (c) penalises the failure or refusal to submit any return, statement or other document required under the Scheme. The failure to pay any such contribution or to submit any return or statement continues from day to day; a fresh offence is committed by the accused so long as he continues in his failure to pay the contribution or to submit the return or statement. It is not mere failure to obey an order or to comply with a direction. It is not as if once he fails to pay the contribution or to submit the return on the due date, the employer is relieved of his duty and there is nothing more to be done. The duty to pay the contribution or to submit the return still remains and continues till the contributions are made or the returns submitted. Therefore, a failure to pay the contribution or to submit the return is a continuing breach of a duty which continues till it is performed and the non-performance of such a duty from day to day is a continuing wrong. We are unable to agree with Natarajan, J's observation that since the contributions and charges have to be paid under the Act or the Schemes on the 15th of the month next after the one for which the contributions or charges were due the offences become completed as soon as the contributions or charges were not remitted within the stipulated time. A failure to pay the contributions or to submit the returns is an offence which is susceptible of continuance and is certainly distinguishable from the one which is committed once and for all and it is a liability which continues until the contribution is made or the return submitted and as such the offence complained of against the revision petitioners in our opinion, comes clearly within the definition of a continuing offence as contained in the decision of the Supreme Court in State of Bihar v. Deokaran Menshi (1973) L.W. Crl. 129. In the aforesaid case the Supreme Court was dealing with Ss. 66 and 79 of the

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Mines Act and the Indian Metaliferous Regulations, (1926) Reg. 3 and the Supreme Court held that the infringesment in that case occurred on January 21 of the relevant year under Regulation 3 read with S.66 and is complete on the owner failing to furnish the annual returns by that day. The Supreme Court further noticed that the regulation did not lay down that the owner, manager, etc., of the mine con-lerned would be guilty of an offence if he continues to carry on the mine without furnishing the returns or that the offence continued until the requirement of Reg.3 was complied with or, in other words, Reg.3 does not render a continued disobedience or non-compliance of it an offence. It might be noted that the Supreme Court has in the aforesaid decision referred with approval to the decision in State v. Bhiwandiwalla (I.L.R. 1955 Bom. 192 = A.I.R. 1965 Bom. 161). Therefore, in our view, the offences complained of, against the revision petitioners are continuing offences and as such under S. 472, Crl.P.C. a fresh period of limitation would begin to run at every moment of the time during which the offence continues".

(ii) AIR 1984 Supreme Court 1688 (Bhagirath Kanoria v. State of M.P.) wherein the Apex Court in paragraph 21 has laid down as follows:-

"21. For these reasons, we are of the opinion that the offence of which the appellants are charged, namely, non-payment of the employer's contribution to the Provident Fund before the due date, is a continuing offence and, therefore, the period of limitation prescribed by Section 468 of the Code cannot have any application. The offence which is alleged against the appellants will be governed by Section 472 of the Code, according to which, a fresh period of limitation begins to run at every moment of the time during which the offence continues".

7. I have carefully considered the above said submissions made by the learned counsel on either side. The contention of the learned counsel for the petitioner that since the maximum punishment that could be imposed for the offence committed under Sections 14 (1 A) and 14 A of the Employees' Provident Fund Act is only three years, the complaints ought to have been filed within a period of three years as provided for under Section 468 (1) (c) of the Criminal Procedure Code and whereas admittedly the complaints have

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been filed beyond the period of three years and as such the complaints are liable to be quashed has to be rejected in the light of the law laid down by a Division Bench of this Court in 1980 L.W. Crl. 226 (referred to supra) and the law laid down by the Apex Court in the decision reported in AIR 1984 Supreme Court 1688 (referred to supra). Since as per the above said two decisions the offences, for which the petitioners are facing criminal trial, are continuing offences the period of limitation prescribed under Section 468 (1) (c) of the Criminal Procedure Code will not apply to these cases. The law laid down by the Apex Court squarely applies to the facts of these case.

8. The above criminal original petitions are devoid of merits and the same are liable to be dismissed and accordingly dismissed. Consequently connected MPs are closed.

Srk

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

To

The Judicial Magistrate No.II, Udumalpet

1 cc to Mr.Vibhishanan, Advocate, SR.69588
1 cc to Mr.K.Kalyanasundaram, Advocate, SR.69324

ASM (CO)

dv/7.12.

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